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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,940	09/15/2006	Lamberto Carta	2540-1052	8690

466 7590 09/12/2007
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EXAMINER

NGUYEN, DINH Q

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/592,940

Applicant(s)

CARTA, LAMBERTO

Examiner

Dinh Q. Nguyen

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/15/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim(s) are narrative in form and replete with indefinite and functional or operational language, failing to conform to current U.S. practice. They appear to be a literal translation into English from a foreign document. The claims appear to be a list of the elements of the invention without a clear explanation of each element's placement. The structure that goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. For example: claim 1: line 2, "the mouth of the neck"; line 3 "the liquid"; line 7, "the exterior"; there are insufficient antecedent basis for these limitations in the claim. In claim 1, line 8, "characterized in" should read as --wherein--.

Claim 2 recites the limitation " the upper end " in line 2. There is insufficient antecedent basis for this limitation in the claim. The above noted deficiencies are of exemplary only and should not be taken to be an exhausted list. Applicant is advised to completely review the claims for errors.

3. For the purpose of this Office action, the claims will be examined as best understood by the examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito (U.S. Patent No. 4,432,496) in view of Carta as best understood by the examiner.

Ito discloses an adjustable and sealable jet nebulizer for bottles able to be elastically deformed by squeezing, able to be mounted on a mouth of a neck 11 of a bottle 10 and comprising a conduit 32 for the liquid that connected by means of a check valve 30, to a suction tube 46 which draws in a liquid contained inside the bottle 10 under a volume of air, and a conduit for the air 22/23 communicating with the volume of air of the bottle 10 through air passage 26, surrounding the conduit for the liquid 32 and ending, together with the conduit for the liquid 32 into a mixing chamber communicating with the exterior through a central exhaust orifice 42, wherein the conduit for the air 22/23 and the conduit for the liquid 32 are obtained coaxially in a cylindrical body 20, having in its portion projecting from the mouth of the bottle neck 11, an external thread to be engaged with an internal counter-thread obtained in a screw-on cap 40, provided with the central exhaust orifice 42, a mixing chamber 43, an arm 24 oriented upwards bearing at its free end a tip cap able to be inserted into the central exhaust orifice 42 of the screw-on cap 40 is screwed onto the cylindrical body 20, until sealing the nebulizer.

Ito does not teach a cylindrical wall on the screw cap. However, Carta discloses a squeezable bottle having a nebulising dispensing head 1, a cap 3 with a cylindrical wall 30 that is inserted between an air channel 5 and a liquid channel 4, thus forming a mixing chamber 70 (see figures 1 and 3). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Ito with a cylindrical wall on the screw cap as suggested by Carta. Doing so would provide a way to form a mixing chamber.

Conclusion

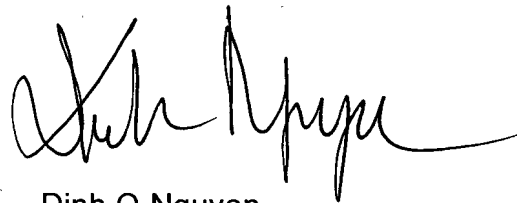
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to a jet nebulizer: De See, Maerte, and Leuenberger.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3752

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Dinh Q. Nguyen', with a stylized, flowing script.

Dinh Q Nguyen
Primary Examiner
Art Unit 3752

dqn